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September 10, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 2, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

One of our products has been recently approved by the U.S. Food and Drug Administration as a Class I medical device. A letter from our attorneys is enclosed clearing further doubts regarding the product mentioned. In our understanding medical devices are non-taxable items.

Please let us know if the product is taxable. We fully want to comply with your state's laws and regulations and also have accurate answers for our customers.

If you have any questions, please call.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use. From the limited information provided, we are unable to determine whether the product you sell is a medical appliance subject to the low rate of tax in Illinois.

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See subpart (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Some of the products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes.

Your letter indicates that the product you sell is a therapeutic massager. Massagers generally do not substitute for a malfunctioning part of the body and are instead used during treatment. Such an item would not qualify for the low rate of tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.